

Finally, the Authority finds that, consistent with the position of all the parties addressing this issue, costs should be developed on a combined basis without jurisdictional allocations.

ISSUE 10: How should the TRA determine the basis for support for “low-income consumers?”

In addressing the provision of support for low-income consumers, the TRA considered various aspects of the Lifeline program and waiver requirements to the no-disconnect rule. The following issues were considered:

- 10a. Should the TRA change its existing Lifeline program?**
- 10b. What standards and procedures should be adopted to address waiver requirements to the no-disconnect rule?**
- 10c. What funding mechanism should be adopted to fund Lifeline and Linkup?**

Positions of the Parties

Most of the Parties contend that the TRA should maximize available benefits and conform the state program to the Federal program where they are different. BST also argues that the TRA had already acted to provide the maximum Federal support and all that was left to do was notify the FCC. The Parties also maintain that the FCC waiver requirements to the no-disconnect FCC rule (54.401(b)(1))²⁹ are reasonable and should be adopted by the TRA.

Findings

The Authority, by order entered November 7, 1997, and captioned *Order Establishing Procedures For Lifeline Consents Pursuant To Section 214(e) Of The Telecommunications Act of 1996 And FCC Order 97-157*, has already taken the necessary action to increase Lifeline support to the level where the maximum Federal support can be obtained. The Authority makes no further change to its existing Lifeline program. Also, the Authority finds that the intrastate portion of Lifeline and Link-up shall be funded from the intrastate USF.

The Authority finds that the criteria established in Section 54.401 of the FCC rules should be adopted for granting waivers to the no disconnect rule. FCC rules prohibit carriers

²⁹ 47 CFR § 54.401(b)(1).

from disconnecting the telephone service of a Lifeline customer for non-payment of toll charges except under certain circumstances. Specifically, the TRA will grant a waiver of the FCC no-disconnect rule, if the local exchange carrier can demonstrate that: (1) it would incur substantial costs in complying with this requirement; and (2) it offers toll limitation to its qualifying low-income consumers without charge; and, (3) telephone subscribership among low-income consumers in the carrier's service area is greater than or equal to the national subscribership rate for low-income consumers. For purposes of this paragraph, a "low-income consumer" is one with an income below the poverty level for a family of four residing in the state for which the carrier seeks the waiver. The Authority also finds that carriers may re-apply for waivers.

ISSUE 11: Support for Schools and Libraries

In addressing support for schools and libraries, the Authority considered the availability of state discounts, and procedures for pre-discount price complaints, as follows:

- 11a. The TRA should state specifically what discounts are available in Tennessee and at what levels.**
- 11b. How does the TRA address pre-discount price complaints?**

Positions of the Parties

The CAD contends that the TRA should consult with the Department of Education and/or the Tennessee Education Association³⁰ to address this question. The CAD comments that since educational discounts are not residential services, they may not be considered part of Universal Service as defined by the statute. In addition, the CAD questions whether the TRA has the power to establish any service beyond what is prescribed by the FCC. Sprint argues that the current educational discounts should be made explicit. NEXTLINK recommends that the implicit subsidies for educational discounts should be eliminated and made explicit. AT&T contends that the current state and Federal discounts are enough and that the TRA has already stated the level of discounts through the adoption of the Federal Discount Matrix. BST argues that the necessary support should be from the state fund in order to ensure portability among carriers. BST also agrees with AT&T's position that the TRA has already stated the level of discounts through the adoption of the Federal Discount Matrix.

³⁰ The record reflects that over 515 notices were sent to Parties or interested persons in this proceeding. One of the responding interested groups was the Tennessee Department of Education. Ms. Amy Bearman and Ms. Jacqueline Shrago of that Department are on the service list for this proceeding.

Findings

In the interest of ensuring universal and affordable access to telecommunications services for Tennessee schools and libraries, the TRA in its Order in this docket dated September 18, 1997 and captioned *Order Establishing Intrastate Discounts For Schools And Libraries Pursuant To Section 254(h) Of The Telecommunications Act Of 1996 And FCC Order 97-157*, approved Tennessee schools and libraries to receive funding. Today, every school and library in Tennessee, as a result of the Order entered September 18, 1997, can apply for its share of a national universal service funding beginning with the first quarter of 1998. The funding levels are being reexamined at the national level.

The Authority finds that the existing intrastate discounts provided to schools and libraries for School/Parent Communications Service, In-Classroom Computer Access Service, ISDN and Distance Learning Video Transport Service shall be maintained in addition to the federal discounts. On July 15, 1997, the TRA adopted the Federal Discount Matrix which specifically states the federal discount levels available for schools and libraries in Tennessee. These federal discounts are applied to the pre-discount price, which, for the above discussed services, will be no greater than the state tariffed rate, including applicable state discounts. For the most part, discounted rates provided to schools and libraries will be determined by the Federal Matrix. However, the four (4) above-referenced services are already being provided discounts in accordance with state-approved plans. For these services, schools and libraries will have the opportunity to utilize the state discounted rates, and if they qualify, the Federal discount applied to the state discounted rates. Additionally, because it is possible that Federal funding could be depleted by the time some schools and libraries are approved for Federal discounts, and because it is possible that some Tennessee schools may only minimally qualify for Federal support, the continuance of state-established education plans assures schools and

libraries of receiving some level of discounted telephone service.³¹ Companies should immediately make necessary tariffs changes to be consistent with this finding.

The Authority also finds that the existing procedures for addressing pre-discount price complaints shall continue to be used.

³¹ The Telecommunications Act of 1996 requires all Schools and Libraries to participate in a competitive bidding process in order to receive the Federal discount on eligible services. Bids must be submitted to establish a "pre-discount" price to which the discount will be applied. The "pre-discount" price must be the lowest amount charged by providers to other Parties for similar services.

ISSUE 12: Support for Health Care Providers

In addressing support to health care providers, the TRA and the Parties considered the necessity for and cost of providing additional support to rural areas. The following two issues were considered:

12a. Should the TRA provide support in addition to that provided for by the Act and the FCC?

12b. If so, who should pay for it and how?

Positions of the Parties

BST suggests that existing Federal support for health care providers is sufficient. The CAD maintains that the Department of Health should be consulted³² and questioned whether additional support could be provided without a change in existing law. The Coalition comments that additional support would not be necessary until the effectiveness of current Federal support is evaluated.

Findings

No party argued that support should be given to health care providers in addition to that provided by the Federal USF. The FCC concluded that all public and non-profit health care providers that are located in rural areas and meet the statutory definition set forth in Section 254(h)(5)(B) are eligible for support under Section 254(h)(1)(A), subject to a \$400 million annual cap. In December, 1997, the TRA determined that Tennessee's rural health care providers can take advantage of the available universal support. The Authority finds that the currently available Federal universal support mechanism for rural health care providers is adequate and that, if in the future it can be demonstrated that the effectiveness of the Federal plan is lacking, the TRA may revisit this issue.

³² The Universal Service proceeding has been publicly noticed; however, the Department of Health elected not to comment.

ISSUE 13: How should the TRA monitor provision of supported service to determine if support is being used as intended until competition develops?

In addressing the need for the TRA to monitor the provision of supported services, the Authority considered the following sub-issue:

13a. Does the TRA need cost allocation rules or accounting safeguards to determine that services supported do not bear more than a reasonable share of joint and common cost or otherwise unnecessarily subsidize a service?

Positions of the Parties

AT&T and BST contend that the TRA should monitor service levels until two or more providers are in a particular area. BST maintains that additional safeguards are not necessary because Universal Service joint and common costs will be determined in Phase II. The CAD argues that rules are needed to make sure support is not being used to subsidize competitive services. The Coalition maintains that safeguards are needed only to monitor service levels and that there are other cost allocation rules already in place to guard against cross-subsidization. There was no cross examination on this issue during the hearing.

Findings

Section 254(k) of the *Telecom Act* prohibits carriers from using revenues from noncompetitive services to subsidize competitive services. This Section also gives the FCC and States, respectively, the authorization to design cost allocation rules, as necessary, to ensure that services included in the definition of universal services bears no more than a reasonable share of the joint and common costs of facilities used to provide those services. The FCC considered this matter in its October 7, 1997, Notice of Proposed Rulemaking in CC Docket 80-286 but has yet to reach a final decision.

Historically, Tennessee has followed the FCC's lead on accounting and separations issues (i.e., adoption of USOA, Part 64, and Part 36). While the Authority elects not to adopt

new procedures at this time, we will continue to monitor the status of FCC's revised cost allocation rules and may adopt them at a later date. Not adopting new procedures at this time does not diminish the Authority's existing audit powers that could be used for policing and investigative purposes. The Authority also finds that existing quality of service standards should be maintained until the TRA determines they are no longer necessary.

ISSUE 14: Are any changes in state laws or rules needed?

Positions of the Parties

In assessing whether to recommend changes to existing Tennessee laws or TRA rules, the Authority considered the following issues:

- 14a. Is there a conflict between Federal statute provision that Universal Service support should be explicit and the Tennessee statute requirement?**
- 14b. How does the TRA reconcile the state Universal Service statute with the Federal statute on "sufficient" Universal Service funding?**
- 14c. Will rules have to be changed to allow various regulatory schemes to provide for recovery of any Universal Service contributions?**
- 14d. Will rules have to be changed to allow transition for carriers operating under various regulatory schemes?**
- 14e. Is legislation needed to appoint a third party administrator?**

Positions of the Parties

AT&T contends that there is no conflict between federal and state law and, thus, Tennessee law controls. AT&T argues that Tenn. Code Ann. § 65-5-207 reads "shall" develop rather than "should" develop when referring to Universal Service support. AT&T further argues that the State USF mechanism must conform to both Federal and state statutes. AT&T suggests that the TRA seek an Attorney General's opinion on whether legislation is needed for the TRA to appoint a third party administrator of the USF. AT&T also suggests that the TRA propose legislation stating that the agency has the power to carry out the purposes of the Telecom Act. The CAD argues the entire process should be made a part of a rulemaking proceeding.

Findings

The Authority finds that since this is an ongoing proceeding it is not necessary at this point to rule on whether any TRA rules should be promulgated, or whether state law changes should be recommended to the legislature. This issue may be revisited if it becomes necessary as this docket proceeds.

Issue 15: Should the Access Reform issues be incorporated into the schedule addressing Phase II of the Universal Service proceeding?

Findings

The parties identified this procedural matter for consideration in Phase I of this proceeding. However, this issue was addressed prior to the hearing on Phase I. In an Order issued on December 19, 1997, in Docket 97-00888, the TRA determined that the access reform docket (Docket No. 97-00889) would run concurrently with the hearing of Phase II of this docket.

Having reviewed the record, the Authority makes the following Findings of Fact and Conclusions of Law:

IT IS THEREFORE ORDERED THAT:

1. The following "core" services shall be supported by the intrastate universal service fund: the primary access line consisting of dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, access to 911 Emergency Services and educational discounts existing on June 6, 1995;
2. The intrastate portion of Lifeline and Link-up services shall be funded through a separate, specific fund within the intrastate USF;
3. Upon a showing by an otherwise eligible carrier that exceptional circumstances prevent them from providing one or more qualifying services, the TRA may grant a carrier's petition for intrastate ETC status for a limited period of time;
4. In order to be designated as an intrastate ETC and be eligible to receive intrastate support, eligible carriers must, throughout its service area: (1) offer the "core" services that are supported by the intrastate universal service fund; (2) offer toll blocking; (3) offer access to the following services: directory assistance, interexchange carriers and operator services; and (4) offer such services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another eligible telecommunications carrier; (5) advertise the availability of and charges for such services using media of general distribution; and (6) comply with current and future service quality standards adopted by the TRA;

5. Carriers must be certified with the Authority as an intrastate Eligible Telecommunications Carrier in order to receive intrastate Universal Service support;

6. If an intrastate ETC provides supported services by reselling a service purchased at the wholesale discount, as determined in Docket 96-01331, *Avoidable Costs of Providing Bundled Service for Resale by Local Exchange Companies*, such ETC will not be eligible for intrastate Universal Service support on that particular service;

7. Companies are not required to participate in this proceeding in order to be designated as an intrastate ETC and receive Universal Service support;

8. Requirements in FCC Rule 47 CFR §54.205 provide sufficient exit barriers to address carrier of last resort obligations required by TCA §65-5-207(a);

9. Service areas shall be designated by wire center. Pursuant to the provisions of Section 214(e)(1) of *Communications Act, as amended*, an ETC must offer the services supported by the USF throughout the service area for which the designation is received;

10. Rural carriers shall not be addressed in this proceeding;

11. For purposes of this proceeding, the Authority defines an intrastate telecommunications carrier as -- any provider of intrastate telecommunications services, except that such service does not include aggregators of intrastate telecommunications services. The Authority defines intrastate telecommunications as -- the transmission, between or among points located within the State of Tennessee specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. Intrastate telecommunications service is defined as -- the offering of intrastate telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used;

12. Except for the two exemptions noted below, all providers of intrastate telecommunications services in Tennessee, regulated or not, shall be required to contribute to the intrastate USF. The Authority finds that the following two (2) exceptions shall apply to the requirement to contribute: 1) A temporary exemption from contribution by rural carriers and co-operatives as long as the rural carrier or cooperative is not serving non-rural customers or entered into an interconnection agreement to serve non-rural customers; 2) A *de minimis* exemption applicable if a telecommunications carrier's annual contribution to the USF is less than \$1,000;

13. Support shall be provided on the primary access line of residential subscribers in high cost areas regardless of the subscriber's income level;

14. Affordability of rates shall be monitored by the Authority through periodic evaluations of subscribership levels and associated market conditions such as average income levels, inflation and other socioeconomic factors;

15. A subsidy occurs when the costs associated with at least one good or service exceeds its revenue, while the revenues from the sale of some other set of goods or services exceed the associated costs, such that total costs are recovered. A subsidy is implicit when it is not identified and itemized. A subsidy is explicit if it is specifically identified and itemized. For purposes of this proceeding, a group of services is receiving a subsidy if the associated forward looking economic costs exceed the revenues from the sale of the service;

16. After the total amount of Universal Service support is initially determined, the affected companies should file proposals to rebalance rates, including a plan to collect the resulting final support needed for Universal Service;

17. The revenue benchmark used in calculating support for each wire center shall be the average revenue per residential line for that wire center. The average revenue shall be

calculated using residential revenues from the following services: basic local service, toll, directory assistance, all vertical features, touch-tone, zone charges, long distance access (intrastate/interstate), the interstate Subscriber Line Charge, and white page services. In addition, the subsidy provided by Yellow Page advertising shall be included in the revenue benchmark;

18. The cost studies should reflect the estimated costs for each wire center. Cost studies shall include the network components needed to provide all of the services in the revenue benchmark. At a minimum, the entire loop and port, and reasonable allocations of switching costs, tandem switching, transport and any software necessary to provide the services in the revenue benchmark must be included in calculating the forward-looking costs for each wire center;

19. The methodology and assumptions used in developing Universal Service costs and UNE prices shall be consistent;

20. Universal Service costs shall be developed on a combined basis, without regard to jurisdictional separations;

21. Cost studies submitted for Phase II of this proceeding shall use factors which reflect the forward-looking, least cost technology of an efficient firm operating in Tennessee;

22. The current approved tariff rates should be used to determine the revenue benchmark. Demand for usage sensitive revenues should be the latest twelve (12) months to date units, and the demand for non-usage sensitive revenues should be the most current units;

23. The Authority makes no further changes to its existing Lifeline program;

24. The existing intrastate tariffed discounted rates provided to schools and libraries for School/Parent Communications Service, In-Classroom Computer Access Service, ISDN and

Distance Learning Video Transport Service shall be maintained in addition to the federal discounts;

25. Federal discounts shall be applied to the pre-discount price which, at a minimum, will be the state tariffed rate applicable to schools and libraries. Companies should amend their tariffs immediately to reflect this requirement;

26. Existing procedures for addressing pre-discount price complaints shall continue to be used;

27. The Authority finds that the currently available Federal universal support mechanism for health care providers is adequate and that, if, in the future, it can be demonstrated that the effectiveness of the Federal plan is lacking, the Authority may revisit this issue;

28. Existing quality of service standards shall be maintained until the Authority determines they are no longer necessary;

29. Pursuant to the findings in this Order, the Parties shall file compliant cost studies and revenue analyses in Phase II of this proceeding under the schedule to be set by the Hearing Officer in this proceeding; and

30. Any party aggrieved with this Interim TRA decision on Docket 97-00888 may file a Petition for Reconsideration with the TRA within ten (10) days from and after the date of this Order.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY

**Universal Service
(Phase I)**

Docket 97-00888

List of Commonly Used Abbreviations

BCPM	Benchmark Cost Pricing Model
CAD	Consumer Advocate Division
CLEC	Competing Local Exchange Carrier
CBG	Census Block Group
COLR	Carrier of Last Resort
ETC	Eligible Telecommunications Carrier
FCC	Federal Communications Commission
ILEC	Incumbent Local Exchange Carrier
IXC	Interexchange Carrier
LEC	Local Exchange Carrier
The Act	Telecommunications Act of 1996
TRA	Tennessee Regulatory Authority
TRC	Tennessee Relay Center
UNE	Unbundled Network Element
USF	Universal Service Fund

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 17, 1997

IN RE: UNIVERSAL SERVICE
GENERIC CONTESTED CASE

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) DOCKET NO. 97-00888
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**ORDER DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS
PURSUANT TO 47 U.S.C. § 214(e), THE TELECOMMUNICATIONS ACT OF 1996,
SECTION 254(C) AND FCC ORDER 97-157.**

This matter came before the Tennessee Regulatory Authority ("Authority") upon its own motion at a regularly scheduled conference held on December 2, 1997, pursuant to 47 U.S.C. § 214(e), the *Telecommunications Act of 1996* ("Telco Act") and *Federal Communications Commission (FCC) Order 97-157*. The purpose of this Order is to designate Eligible Telecommunications Carriers.

I. Background for the Order

Eligible Telecommunications Carriers ("ETCs"), certified under 47 U.S.C. § 214(e)(1), will be qualified to receive Federal Universal Service support under Section 254(c) of the *Telco Act* if, throughout their designated service area, they offer services that are supported by a Federal Universal Service support mechanism under Section 254(c). To receive interstate support the carrier must use either its own facilities or a combination of its own facilities and the resale of another carrier's services (including the services offered by another Eligible Telecommunications Carrier). The carrier seeking to receive Universal Service support is also required to make available Lifeline Services and must advertise the availability of the services they provide and the charges for these services. The advertisement must be made through a media of general distribution.

Each common carrier seeking designation as an Eligible Telecommunications Carrier (ETC) under this Order has filed a sworn and notarized Request for Designation in this docket. This Request for Designation indicated that the carrier will provide the services and functions required by the FCC in their certificated areas for purposes of Federal Universal Support. Each request for Designation stated compliance with the requirements set forth in 47 CFR § 54.201 through 54.207 and was signed by a senior official of the carrier.

II. Interim Approval of Service Areas.

The Authority approves on an interim basis the service areas designated by the incumbent local exchange companies (ILECs) in their petitions. However, we are cognizant that the FCC has asked the states not to designate large service areas for ETCs, for fear that the service areas would not be competitively neutral. Testimony by interested Parties on the designation of service areas for ETCs was heard by the Authority during Phase I of the Authority's Universal Service proceeding (non-cost issues). Once the Authority reaches a decision on the designation of service areas for ETCs this information will be forwarded to the FCC and Universal Service Administrative Company (USAC) for the purpose of redefining the service areas of designated non-rural ETCs.

III. Carriers Eligible for Universal Service Support

The carriers listed in this section have requested designation by this Authority as Eligible Telecommunications Carriers (ETCs). The carriers are: Ardmore Telephone Company; BellSouth Telecommunications, Inc.; Century Telephone of Adamsville, Inc.; Century Telephone of Claiborne, Inc.; Century Telephone of Ooltewah Collegedale, Inc.; Citizens Telecommunications Company of Tennessee, LLC; Citizens Telecommunications Company of the Volunteer State, LLC; Concord Telephone Exchange, Inc.; Crockett Telephone Company; Humphreys County Telephone Company; Loretto Telephone Company; Millington Telephone Company; People's Telephone Company; Tellico Telephone Company; Tennessee Telephone Company; United Telephone Company; United Telephone-Southeast, Inc.; West

Tennessee Telephone; Ben Lomand Rural Telephone Cooperative; Blodsoc Telephone Cooperative, Inc.; DeKalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.; North Central Telephone Cooperative, Inc.; Skyline Telephone Membership Corporation; Twin Lakes Telephone Cooperative Corporation; Yorkville Telephone Cooperative; and West Kentucky Rural Telephone Cooperative, Inc.

IV. Petitions for Additional Time to Complete Network Upgrades.

In addition to the procedures for certifying potential recipients of Universal Service support as Eligible Telecommunications Carriers, the FCC made provisions for a telecommunications carrier that would be eligible to receive Universal Service support under 47 CFR § 54.201 to receive additional time to upgrade its network systems under exceptional circumstances by petitioning the Authority under FCC Rule § 54.101(9)(c). The ILECs have petitioned for an extension of time to upgrade their network systems to accommodate the toll limitation requirement of the FCC Order as defined in 47 CFR § 54.400(a)(3). The Petitioners stated the exceptional circumstances that the technology to provide the FCC requirement of toll limitation service was not readily available and that the FCC may reconsider this requirement. The Authority grants to the designated Eligible Telecommunications Carriers herein, an extension of time to upgrade their network systems to accommodate the toll limitation requirement of the FCC Order as defined in 47 CFR § 54.400(a)(3) until the FCC reconsiders the matter or until such time as technology to provide the service becomes readily available.*

IT IS THEREFORE ORDERED THAT:

1. On an interim basis, the Authority approves the service areas designated in the petitions from the incumbent local exchange companies.
2. The Authority grants to the designated eligible telecommunications carriers (ETCs) additional time as stated herein to provide toll limitation service.

* This grant of additional time is only for that period of time that the Authority, in its continuing monitoring of technology, finds that exceptional circumstances exist, and does not extend beyond the time the Authority deems necessary for the ETCs to complete network upgrades.

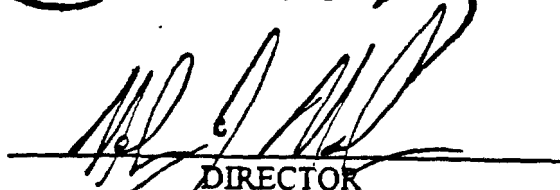
3. The following carriers are designated by this Authority as Eligible Telecommunications Carriers: Ardmore Telephone Company; BellSouth Telecommunications, Inc.; Century Telephone of Adamsville, Inc.; Century Telephone of Claiborne, Inc.; Century Telephone of Ooltewah Collegedale, Inc.; Citizens Telecommunications Company of Tennessee, LLC; Citizens Telecommunications Company of the Volunteer State, LLC; Concord Telephone Exchange, Inc.; Crockett Telephone Company; Humphreys County Telephone Company; Loretto Telephone Company; Millington Telephone Company; People's Telephone Company; Tellico Telephone Company; Tennessee Telephone Company; United Telephone Company; United Telephone-Southeast, Inc.; West Tennessee Telephone; Ben Lomand Rural Telephone Cooperative; Bledsoe Telephone Cooperative, Inc.; DeKalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.; North Central Telephone Cooperative, Inc.; Skyline Telephone Membership Corporation; Twin Lakes Telephone Cooperative Corporation; Yorkville Telephone Cooperative; and West Kentucky Rural Telephone Cooperative, Inc.

5. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.

6. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 18, 1997

IN RE: UNIVERSAL SERVICE
GENERIC CONTESTED CASE

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) DOCKET NO. 97-00888
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ORDER ESTABLISHING INTRASTATE DISCOUNTS FOR SCHOOLS
AND LIBRARIES PURSUANT TO SECTION 254(h) OF
THE TELECOMMUNICATIONS ACT OF 1996 AND FCC ORDER 97-157

This matter is before the Tennessee Regulatory Authority (the Authority) on its own motion at a regularly scheduled conference held on July 1, 1997, pursuant to 47 U.S.C. 254(h) of the *Telecommunications Act of 1996* and *Federal Communications Commission (FCC) Order 97-157*. The purpose of this Order is to adopt the federal discount levels for intrastate telecommunications services, to permit schools and libraries in Tennessee to begin using the discounted services January 1, 1998, and to provide requisite State approval so that schools and libraries may begin applying for federal funding with the School and Libraries Corporation as soon as the applications are available. See the Supplemental Information attached to this Order. Question number 31, for details on the FCC *Second Order on Reconsideration* issued July 18, 1997.

Background for the Order

In February, 1996, the United States Congress passed the *Telecommunications Act of 1996* ("Telco Act"). The Telco Act was enacted to further competition and reduce regulation for American telecommunications consumers. As a part of the Telco Act, a provision was made for preservation of Universal Service under § 254. Such preservation of Universal Service would provide a funding

mechanism to ensure access to telecommunications services for low-income, rural, insular and high cost areas at a cost comparable to those in urban areas for similar services. The responsibility for implementing the *Telco Act* was delegated to the FCC, and on May 8, 1997, the FCC issued its *Report and Order*, *FCC Order No. 97-157 (Docket Number 96-45)*, implementing key portions of *Section 254* of the *Telco Act* which addresses universal service.¹ The order concluded several things, including identification of services to be supported by federal universal service funding and the mechanisms whereby such funding will be provided. Discounts on telecommunications services and certain non-telecommunications services for schools and libraries are among the items earmarked for federal funding.

The FCC Order provides for federal funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is predicated upon adoption by the states of discount levels no less than the federal discount levels for intrastate services. While the FCC adopted rules that will permit schools and libraries to begin using the discounted services on January 1, 1998, they may begin applying for funding July 1, 1997, or as soon as the application is completed by the School and Library Corporation established by the National Exchange Carrier Association, Inc. We will address the adoption of intrastate discounts for schools and libraries in this Order. We have also attached, as a supplement to this Order, information from the FCC on questions which have been posed to them on the way the application process will work, how discounts will be applied, and who will administer the the federal fund distributions under the FCC Order. It should be noted that the competitive bidding requirement for eligible schools or libraries has been suspended for contracts covering services before December 31, 1998. Question number 31 in the Supplement on frequently asked questions attached to this Order, has the full text of the paragraph in the FCC decision on this exception.

¹ The paragraphs addressed are 424 through 606 of the *Report and Order*.

Discussion

In the *Telco Act of 1996*, Congress directed the FCC and the State Commissions to take steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural healthcare providers. The *Telco Act of 1996* requires that states establish intrastate discounts on designated (but not limited to named) services provided eligible schools and libraries.²

While *Section 254(h)(1)(B)* of the *Telco Act* permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services, the FCC states in paragraph 550 of its Order that the *Telco Act* does nothing to prohibit federal funding of such intrastate discounts, nor does it prohibit conditioning that funding on state adoption of the federal discount levels. Accordingly, the FCC has decided to exercise its authority to provide federal universal service support for intrastate discounts. No state funding is required for these intrastate discounts, as long as the FCC discount levels are adopted. The participating providers, such as a Local Exchange Carrier (LEC), referred to as "carriers" throughout the FCC Order, will be compensated for the discounts provided to schools and libraries completely through the federal universal service fund. It should be carefully noted that this funding is not supplemental to state funding, and that when the Federal funds for this purpose are exhausted, the State of Tennessee has no current plans to provide additional or supplemental funding. Adoption of the FCC funding plan does not, however, preclude the State of Tennessee from addressing funding to this program in the future.

² Specifically, the *Act* states: "All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. 47 U. S. C. 254(h)(1)(B)."